THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 13948 of 2006

25-07-2006

Between:-

D. Venkateshwara Rao

Petitioner

And

The Regional Joint Commissioner of Endowments, Kakinada, East Godavari district and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 13948 of 2006

Oral order:

Heard the learned counsel for the petitioner and the learned Government Pleader for Endowments and as requested, the writ petition is disposed of at the stage of admission.

The petitioner claims to be a lessee of the lands belonging to the Sri Parwathi Ramalingeswara Swamy Temple, Kanuru, Penamaduru mandal, Krishna district, the 3rd respondent. He claims to be the cultivating tenant of land in an extent of Ac.03-77 cents in survey No. 161/3 of Kanuru village, on the basis of a lease granted by and on behalf of the 3rd respondent.

Claiming that he is a landless poor person within the

meaning of the said expression in Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), the petitioner made an application to the 2nd respondent for a declaration that he is a landless poor person and with the object of eventually claiming the benefits under Section 82 of the Act.

By the proceedings dated 16-02-2004 of the 2nd respondent, the petitioner was held to be not a landless poor person. The reasons recorded by the 2nd respondent for coming to the said conclusion in his proceedings dated 16-02-2004 are as under:

> *"On verification of records, it is found that the applicant is cultivating an extent of Ac.3.77 cts of wet land. As the petitioner holding more than Ac.2.50 cts of wet land, in view of the judgment of A.P. High Court, Hyderabad in J. Nagaiah vs. A.C., Ongole, reported in 2004, ALD 587, the claim of Sri D. Venkateswara Rao s/o. Venkatappaiah is hereby rejected.*
>
> *The Executive Authority of the subject temple is directed to take further steps as per Rules. He is further directed to collect the amounts towards damages for use and occupation of the land for the year."*

Aggrieved thereby, the petitioner preferred an appeal

to the 1st respondent being appeal No.26 of 2005. By an order dated 20-12-2005 which is similarly laconic and bereft of reasons, the appeal was dismissed by the 1st respondent. The 1st respondent held "admittedly the appellant held an extent of Ac.3-77 wet exceeding the limits and failed to establish that it is a dry land". The continuous refrain of the petitioner before the primary authority, the 2nd respondent and the appellate authority, the 1st respondent is that he is a landless poor person having no other land of his own except the extent of Ac.03-77 cents of dry land of the 3rd respondent, leased to him. The 1st respondent's conclusion in his appellate order dated 20-12-2005 that "admittedly the petitioner held an extent of Ac.03-77 cents of wet land exceeding the limit", is a conclusion that is perverse. If the appellate authority or the primary authority had any other material to come to the conclusion that the land was indeed wet land, they could have recorded the material on the basis of which the conclusion is based. But even so, they could not have recorded that it is the case of the petitioner himself that it is a wetland.

Either the respondent Nos. 1 and 2 are grossly ignorant of the language or they do not care to apply the

mind rationally to a *lis* presented for their consideration. In either event, the orders of the respondent Nos. 2 and 1 dated 16-02-2004 and 20-12-2005 are unsustainable and are accordingly quashed.

Another relief sought by the petitioner is for a declaration by this court that the petitioner is a landless poor person. It is not within the jurisdiction nor the province of this court to declare the petitioner a landless poor person. That is a function entrusted by the legislature to the competent authority, the 2nd respondent and in appeal to the 1st respondent. It is those authorities, who are required to exercise rational discretion and determine the competing claims based on the relevant material and have to record a finding whether the petitioner is a landless poor person.

In the circumstances above, the 2nd respondent is directed to expeditiously and in any event within a period of thirty (30) days from the date of receipt of a copy of this order, consider the existing material filed by the petitioner along with his applications/representations dated 17-01-2005 and 29-01-2005 in support of his claim to being a landless poor person and any other material already on record and pass an order. The 2nd respondent shall also consider whether there was any legitimate lease executed

between the 3rd respondent-Temple and the petitioner in accordance with the statutory Rules governing the grant of leases, by a process of public auction and thereafter by the approval of lease by the competent authority. Only if there be a valid lease in favour of the petitioner, in terms of Section 82 (1) of the Act read with the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 issued in G.O.Ms.No. 379 Revenue (Endowments-I) dated 11-03-2003, is the petitioner entitled to be considered a cultivating tenant and for the benefits under Section 82 of the Act. If the petitioner is not a lawful tenant, then he is not entitled to the benefits of Section 82 of the Act even if he were a landless poor person, since the beneficial provisions of Section 82 of the Act are only in favour of legitimate cultivating tenants of the 3rd respondent-Temple lands and not in favour of encroachers or those who are in unlawful occupation of the lands without a legitimate lease in their favour.

The writ petition is disposed of as above. There shall be no order as to costs.

GODA RAGHURAM, J

Dated:25-07-2006

Pvks/*